

Filed for intro on 01/13/95
Senate Bill _____
By _____

House Bill No.HB0047
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AN ACT to make unlawful the use of proceeds from certain criminal offenses; to permit the confiscation and forfeiture of proceeds from certain criminal offenses; and to amend Tennessee Code Annotated, Title 40, Chapter 12, to permit the investigation by a grand jury into violations of this act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Legislative Intent.

(a) The general assembly hereby finds and declares that an effective means of punishing and deterring criminal activities of professional criminals and organized crime is through the forfeiture of profits acquired and accumulated as a result of such criminal activities. The general assembly further finds that professional criminals and organized crime find ways to conceal and disguise the source of their illegal profits by laundering

these profits through legitimate financial channels so as to prevent their discovery and forfeiture to the state.

(b) It is the intent of the general assembly to deter and punish those actions intended to launder or conceal illegal profits. It is the intent of the general assembly to provide the necessary tools to law enforcement agencies and district attorneys general to punish and deter the criminal activities of professional criminals and organized crime through the unified enforcement of effective forfeiture and penal laws. It is the intent of the general assembly, consistent with due process of law, that all property acquired and accumulated as a result of certain criminal offenses be forfeited to the state of Tennessee and that such funds be used to fund law enforcement efforts in this state.

(c) It is further the intent of the general assembly to protect bona fide interest holders and innocent owners of property subject to forfeiture under this act. It is the intent of the general assembly to provide for the forfeiture of illegal profits without unduly interfering with commercially protected interests.

SECTION 2. Definitions.

As used in this act the following definitions apply:

(a) "Attorney general" means the state attorney general, any district attorney general or their assistants.

(b) "Knowingly uses or attempts to use proceeds derived directly or indirectly from a specified criminal offense" means that any person to the transaction knew that the property or proceeds involved in the transaction represented, either in whole or in part, proceeds from some form, though not necessarily which form, of any criminal offense under the laws of this state, regardless of whether or not such offense was known by the defendant to include the particular specified criminal offense as defined in subsection (g) of this section. Provided, however, a person, corporation or financial institution, receiving funds or property in the ordinary course of business shall not have

"knowledge" that the funds or property so received represented proceeds of any criminal offense solely because of:

- (1) The identity or reputation of the transferor of the funds or property; or
- (2) The identity or reputation of an associate of the transferor.

(c) "Uses" and "conducts" mean initiating, concluding, participating, negotiating, or aiding or abetting in such initiating, concluding, participating or negotiating;

(d) "Financial transaction" means a purchase, sale, loan, pledge, contract, gift, transfer, delivery, concealment, payment, and also includes a withdrawal, transfer, deposit or any other disposition, by any means, of monetary or negotiable instruments, funds or any other property. The receipt of funds or other property by a licensed attorney for a bona fide legal fee is not a financial transaction within the meaning of this act.

"Financial transaction" shall not include:

(1) Any transaction conducted, or attempted, at the request of or in cooperation with any local, state or federal law enforcement official with regard to any person acting at the request of or cooperating with such official when such person knows that the official is making an official request;

(2) Any transaction conducted by a person, corporation, or financial institution, in the ordinary course of business, with a duty to comply with any state or federal currency transaction reporting or recording requirements, unless such person, corporation or financial institution shall intentionally violate such state or federal currency transaction reporting or recording requirements, but only as to such person, corporation or financial institution.

(3) Any transaction conducted, or attempted, by a person, corporation or financial institution, in the ordinary course of business, which is deemed by the person, corporation or financial institution to be a suspicious transaction or

transactions, whether reportable or not under any state or federal currency transaction reporting or recording requirements, where:

(A) Such person or corporation reports such suspicious transaction, or a similar transaction conducted previously, to any local, state or federal law enforcement official and such report would not violate any attorney-client privilege; or

(B) In the case of a financial institution, the financial institution reported the transaction, or a related transaction conducted previously, to the institution's primary regulator or to another regulator or law enforcement official pursuant to the directions of the institution's primary regulator; but only with regard to the person, corporation or financial institution making the report.

(e) "Interest holder" means a secured party within the meaning of Tennessee Code Annotated Section 47-9-105(m), a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value. A person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an interest holder.

(f) "Owner" means a person, other than an interest holder, who has an interest in property. A person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an owner.

(g) "Specified criminal offense" means any of the following offenses, or, any act or offense committed in another jurisdiction which would constitute one of the following offenses if the act or offense had been committed in this state:

(1) Tennessee Code Annotated, Sections 39-13-201, 202 and 210--213, relative to criminal homicide;

(2) Tennessee Code Annotated, Sections 39-13-401--403, relative to robbery;

(3) Tennessee Code Annotated, Section 39-13-515, relative to promoting prostitution;

(4) Tennessee Code Annotated, Section 39-14-103, if the value of the property is over one thousand dollars (\$1,000), relative to theft of property;

(5) Tennessee Code Annotated, Sections 39-14-301 and 302, relative to arson;

(6) Tennessee Code Annotated, Section 39-17-417(g)(2),(i)-(j), relative to felony drug offenses over certain amounts;

(7) Tennessee Code Annotated, Section 39-17-504, relative to aggravated gambling promotion, but only where the gambling enterprise has received five thousand dollars (\$5,000) or more in gross wagers in any single day;

(8) Tennessee Code Annotated, Section 39-17-1005(a)(1), relative to especially aggravated sexual exploitation of a minor and;

(9) Tennessee Code Annotated, Sections 48-2-121--123, relative to fraudulent securities acts.

SECTION 3. Criminal Penalties.

(a) Whoever knowingly uses or attempts to use proceeds derived directly or indirectly from a specified criminal offense to conduct or attempt to conduct a financial

transaction with the intent to conceal or disguise the nature, location, source, ownership, or control of the criminally derived proceeds shall be guilty of a Class B felony.

(b) Whoever knowingly uses proceeds derived directly or indirectly from a specified criminal offense with the intent to promote, in whole or in part, the carrying on of a specified criminal offense shall be guilty of a Class B felony.

(c) Whoever knowingly conducts or attempts to conduct a financial transaction involving property or proceeds represented by a law enforcement officer, or by another at the direction of a law enforcement officer, to be the property or proceeds derived from a specified criminal offense with the intent to conceal or disguise the nature, location, source, ownership, or control of the criminally derived proceeds or with the intent to promote the carrying on of a specified criminal offense shall be guilty of a Class B felony.

SECTION 4. Joinder of Offenses.

A defendant charged with a violation of one (1) or more offenses specified in Section 3 of this act may also be jointly charged, tried, and convicted in a single prosecution for committing any related specified criminal offense, which shall be separately punished.

SECTION 5. Criminal Intent.

(a) In a prosecution for an offense under this act the state is not required to prove that the defendant actually knew that the property or proceeds were derived from a specified criminal offense, so long as the defendant knew that the property or proceeds were derived from some form of criminal activity.

(b) A corporation, the board of directors or the executive officers shall not be responsible for the criminal acts of the corporation's employees, provided that the corporation has exercised due diligence to prevent such criminal acts. For the purpose of this act, a corporation shall be deemed to have exercised due diligence if the criminal acts committed by its employees are in violation of specific corporate policy or

instructions, such corporate policy or instructions were communicated to the employees who committed the criminal acts, the corporation had implemented monitoring or supervision procedures reasonably designed to detect violations of its corporate policy or instruction, and the board of directors and executive officers of the corporation acted in good faith.

SECTION 6. Property subject to forfeiture.

The following property, including all interests in such property, is subject to forfeiture, and all right, title, and interest in any such property shall vest in the state upon commission of the act giving rise to forfeiture:

(a) Any property, real or personal, directly or indirectly acquired by or involved in a financial transaction in violation of Section 3 of this act, or any property traceable to the proceeds from such transaction.

(b) Any property, real or personal, directly or indirectly acquired by the commission of a specified criminal offense or any property traceable to the proceeds from such offense.

SECTION 7. Property exempt from forfeiture.

(a) No interest in any property described in Section 6 of this act shall be subject to forfeiture when one of the following conditions are established:

(1) If the owner or interest holder acquired the property before or during the conduct alleged to give rise to its forfeiture, and he:

(A) Did not know of the act giving rise to forfeiture; or

(B) Acted reasonably to prevent the conduct giving rise to forfeiture; or

(2) If the owner or interest holder acquired the property after the conduct alleged to give rise to its forfeiture, including acquisition of proceeds of conduct

giving rise to forfeiture, and he acquired the property in good faith, for value, and was not knowingly taking part in an illegal transaction.

(b) The state may stipulate that the interest of an owner or interest holder is exempt from forfeiture upon presentation of proof of the claim. The state shall file such stipulation with the court exercising jurisdiction over the forfeiture action and such filing of stipulation shall constitute an admission by the state that such interest is exempt from forfeiture. If such stipulation is submitted then no further claim, answer or pleading shall be required of the stipulated owner or interest holder and a judgment shall be entered exempting such interest from forfeiture.

(c) If equipment and fixtures are seized while in possession of someone other than the owner, or are on premises which are padlocked and the owner of the equipment and fixtures has no interest in the padlocked premises, then the owner may obtain return of his equipment and fixtures if he:

(1) did not know of the act giving rise to forfeiture; or

(2) acted reasonably to prevent the conduct giving rise to forfeiture.

SECTION 8. Jurisdiction and Venue.

(a) Venue in a criminal prosecution under this act shall be either in the county where one or more elements of the specified criminal offense occurred, or in the county where the unlawful financial transaction occurred or was attempted.

(b) Jurisdiction in a civil forfeiture action under this act extends to the chancery and circuit courts, and the general sessions courts for personal property if the value of the personal property subject to forfeiture does not exceed the jurisdictional limit of the court, over:

(1) All interests in property if the property for which forfeiture is sought is within this state at the time the action is filed; and

(2) The interest of an owner or interest holder in the property for which forfeiture is sought if the owner or interest holder is subject to the personal jurisdiction of the court.

(c) In addition to any other provision of law, a proceeding for forfeiture under this act may be maintained in the judicial district in which any part of the property is found or in the judicial district in which a criminal prosecution could be maintained against an owner or interest holder for the conduct alleged to give rise to the forfeiture.

SECTION 9. Evidence.

In a criminal prosecution or forfeiture action under this act, either party may introduce the following evidence pertaining to the issue of whether the property or proceeds were known to be from some form of criminal offense:

(a) That a financial transaction was conducted or structured in violation of the reporting requirements of any state or federal law;

(b) That money or any negotiable instrument was found in proximity to contraband or instrumentalities of an offense;

(c) That a financial transaction was conducted with the use of a false or fictitious name;

(d) That a financial transaction was structured so as to falsely report the actual consideration or value of the transaction.

SECTION 10. Procedure for seizure of property.

(a) Any property subject to forfeiture under this act may be seized by the attorney general, their agents, or any law enforcement officer when acting pursuant to a lawful arrest or search, the execution of a search warrant, a petition to abate a nuisance arising out of a specified criminal offense, or a court order. Whenever property is seized under this act, it may be removed by the seizing agency or official to a place to secure the property, it may be preserved as evidence, it may be padlocked as ordered by a

court of record, it may be secured by depositing in an interest bearing account as approved by a court of record or it may be secured as otherwise authorized by law regarding the maintenance, storage, or disposition of such seized property.

(b) Upon seizure of property for forfeiture under this act the seizing agency or official shall cause to be delivered a written receipt and notice of seizure to the possessor, owner and interest holder as determined from public records. The notice shall list and describe generally the property seized, the agency or official responsible for the seizure and shall state the procedure for obtaining return of the property. The seizing agency shall deliver a copy of the notice to the district attorney general of the judicial district where the seizing agency is located or of the judicial district where the seizure occurred. The state attorney general shall promulgate a uniform notification form for use in all seizures of personal property under this act.

(c) No claim need be filed by an interest holder and no interest holder may have his interest forfeited without service of a complaint for forfeiture under this act.

(d) The attorney general may file a notice of lien lis pendens against any real property subject to forfeiture under this act. No fee shall be charged for the recording of such lien. The lien shall generally describe the real property and the reason for forfeiture. The notice shall specify the court and jurisdiction in which the action is pending and, if known at the time of the filing of the notice, the case number of the action. After the filing of the notice of lien lis pendens the state shall, as soon is practicable, serve a copy of the notice upon any person who has a duly recorded interest in the property as reflected in public records.

(e) The filing of a notice of lien lis pendens under this act creates, from the time of its filing, a lien in favor of the state on the property described therein and subject to forfeiture under this act against the persons named in the notice.

SECTION 11. Procedure for forfeiture of property.

(a) If real or personal property is subject to forfeiture under this act, the attorney general may initiate an in rem forfeiture proceeding in the circuit, chancery or general sessions court of the county where the property is located or where the specified criminal offense occurred. If the property is beyond the jurisdiction of the court, the attorney general may initiate an in personam action against the owner or interest holder if he is subject to the jurisdiction of the court. The complaint shall state a description of the property to be forfeited and the reasons for forfeiture under this act.

(1) If personal property is sought to be forfeited and no claim was timely made by an owner, then the complaint shall state the date that such notice of seizure was served upon the owner and the manner in which service occurred. The complaint shall pray for a default judgment against the owner which shall be entered thirty (30) days after the complaint has been delivered to the last known address of the owner. An interest holder shall, however, be served with the complaint for forfeiture before any disposition of the property can occur.

(2) If personal property is sought to be forfeited and a claim was filed by an owner or there is an interest holder in the property as determined from public records, the complaint shall state when a claim was made for return of the property by an owner and the date that such notice of seizure was served upon the owner. The complaint shall be delivered to the owner at his last known address and served upon all interest holders in the property as duly recorded in public records.

(b) The court shall proceed as soon as practicable to a hearing and determination of the issue of forfeiture. The filing of a complaint under this section shall operate as a stay of any pending administrative forfeiture proceedings. The state shall have the burden to prove by a preponderance of evidence that the property is subject to forfeiture under this act. Such action shall be commenced within five (5) years after the

conduct in violation of the provisions of this act terminates or the cause of action accrues. Notwithstanding any other provision of law, no other claims, pendent claims or counterclaims may be filed in an action for forfeiture under this act.

(c) Property subject to forfeiture may be located in any county or state. Upon a finding by the court that the evidence establishes that the property is subject to forfeiture the judge shall enter a judgment of forfeiture of all property subject to forfeiture and shall order that title to the property be vested in the state of Tennessee from the date that the act which gave rise to the forfeiture occurred, subject to any exemptions provided for in this act. Upon entry of the judgment of forfeiture and the recording of the same in the county and state where such property is located, title to the property shall vest in the state and shall thereafter be disposed of as provided in Sections 18 and 19 of this act. If the property cannot be located, the court shall enter a judgment against the owner equal to the value of the property.

SECTION 12. Procedure for return of property seized.

(a) Only an owner or interest holder may make a claim for return of property seized for forfeiture or otherwise contest the forfeiture under this act. In the event of a seizure for forfeiture under this act, the property shall not be subject to replevin, conveyance, or attachment, but is deemed to be in the custody of the seizing agency or official.

(b) In the event of a seizure of personal property, the owner shall file within twenty-one (21) days after receipt of the notice of seizure a claim for return of the property with the district attorney general in whose judicial district the property was seized. A copy of the claim shall be served upon the agency or official seizing the property. The claim shall contain a copy of the seizure notice and the name and address of the owner of the property.

(c) If after thirty (30) days from the date of the seizure of the property or the filing of a notice of lien lis pendens no administrative or civil forfeiture action has been initiated, the owner or interest holder may petition the chancery court in the judicial district where the seizure occurred for return of the property seized or to have the notice of lien lis pendens released. The district attorney general in whose judicial district the petition is filed shall be served with a copy of the petition. If no administrative or civil forfeiture action is commenced within thirty (30) days after the appropriate official has been served with the petition for return of property or release of lis pendens, then the chancery court shall order the property be returned or the lien released.

(d) Such order to return property or to release a lien shall not bar any action to forfeit the property in a future proceeding but such property may not be seized or lien filed again until such time as a forfeiture proceeding seeking forfeiture of the property has been filed. At any time subsequent to the seizure of the property by the seizing agency, the attorney general may direct the return of the seized property or release any lien filed upon a determination that forfeiture proceedings would be without merit.

(e) After the filing of a forfeiture action under this act, an owner may file a motion with the court in which the action is pending for the state to show cause why the property, or any portion thereof, should not be returned or the lien released. The court shall conduct a hearing on the motion within twenty-one (21) days from the date such motion is filed. If the state proves by a preponderance of evidence that a probability of success on the merits of the forfeiture action exists, the court shall deny the request to return the property or release the lien. If the court finds that the state has failed to prove a probability of success on the merits of the forfeiture action, the court shall order that the property be returned or that the lien be released. If the state proves that a probability of success on the merits exists as to some portion of the property seized or upon which a lien is attached but not on other portions of such property, the court shall order that the

portions upon which the state did not meet the burden of proof be returned or the lien released.

SECTION 13. Rights of Interest Holders and Owners.

(a) Subject to the limitations in Section 14 of this act, nothing in this act shall limit or restrict the right of an interest holder in real property that was of record, prior to the filing of the notice of lien lis pendens, to enforce its deed of trust or to take any other action permitted under its deed of trust as long as prior notice is given to the court and the official filing the notice in accordance with the provisions of this section.

(b) Pending any proceeding to forfeit real property an interest holder who desires to take action under the mortgage or deed of trust shall give notice to the official who filed the lis pendens of any action to be taken under the mortgage or deed of trust.

(1) If the state has stipulated to the interest holder's exemption from forfeiture of its interest and a judgment has been entered, then the interest holder may proceed to foreclose in accordance with its mortgage or deed of trust.

(2) When no judgment has been entered exempting the interest holder's interest from forfeiture, the interest holder may not exercise its right to foreclose its deed of trust on such property unless it gives the official who filed the lis pendens written notice at least twenty (20) days prior to the date of a foreclosure sale and indicates the time, date and place of sale and the balance owing on the debt. Upon receipt of the notice of foreclosure, the official who filed the lis pendens may petition the court where the forfeiture action is pending to require that such foreclosure sale be subject to the approval or conditions of the court. Upon notice to the interest holder the court may grant such request and upon such conditions as it deems just.

(c) The court may enjoin any foreclosure sale when such interest holder is a co-conspirator or accessory to the underlying offense or the acts giving rise to the forfeiture.

(d) Upon completion of a foreclosure sale of real property pending forfeiture, the interest holder or his trustee shall give written notice of the intended distribution of the proceeds of the sale to the official who filed the lis pendens. The interest holder shall deposit with the clerk of the court where the forfeiture action is pending all proceeds from the foreclosure sale in excess of the debt and fees and expenses secured by its deed of trust. If, however, the court has ordered that the sale be conducted under conditions or subject to the approval of the court, the interest holder shall file with the court proof under oath that such conditions were met and any proceeds of the sale ordered to be deposited with the clerk. If no objection is filed by the official who filed the lien lis pendens then the court shall approve the sale and distribution of proceeds.

(e) Pending any proceeding to forfeit any personal property, an owner or interest holder may petition the court exercising jurisdiction over the forfeiture proceeding for possession of said property unless it is needed as evidence. The court shall permit the owner or interest holder to obtain possession of the property upon the execution of a bond in favor of the state of Tennessee and for payment of a sum double the appraised value thereof at the time of the hearing, the sureties for said bond to be approved by the court. The court shall, upon approval of the bond, permit the owner or interest holder to obtain possession of the property unless it is needed for evidence.

(f) If the state has filed a stipulation that an interest holder has an interest that is exempt from forfeiture, the court may release personal property for sale when the property used for collateral is depreciating in value and upon the posting of a bond, unless the same is needed for evidence. After the court's release, the interest holder shall dispose of the property but only by a commercially reasonable public sale and, within ten (10) days of disposition, shall deposit with the clerk of the court where the forfeiture action is pending the amount received at disposition less the amount of the interest holder's encumbrance and reasonable expense incurred by the interest holder in

connection with the sale or disposal. For purposes of this subsection "commercially reasonable" shall be a sale or disposal that would be commercially reasonable under Tennessee Code Annotated Section 47-9-504.

SECTION 14. Protection of seized property.

In the event there is probable cause to believe that any individual having a right to enter real property which is the subject of a forfeiture proceeding under this act is also engaged in any act which will result in the diminution of the value of the real property to the state, then the court in which the forfeiture is pending may grant injunctive relief enjoining any such action diminishing the value of the property including the padlocking of the premises or the appointment of a receiver or any other appropriate extraordinary relief.

SECTION 15. Property deemed a common nuisance.

Any real property which is used, in whole or in part, for the carrying on of a specified criminal offense as defined in Section 2 of this act is deemed a common nuisance and shall be abated by any circuit, chancery, or criminal court upon the filing of a verified petition by the district attorney general pursuant to the provisions of Tennessee Code Annotated, Title 29, Chapter 3. Such nuisance may be abated by padlocking the same pending the disposition of forfeiture proceedings.

SECTION 16. Equity powers of courts.

Any criminal court or general sessions court may conduct such hearings and enter such orders, injunctions, restraining orders, prohibitions, or issue any extraordinary process for the purpose of insuring that any defendant does not use any proceeds directly or indirectly derived from a specified criminal offense, as defined in Section 2 of this act, for the purpose of securing an appearance bond or to pay the premium for the same. Any court may require the defendant or bondsman to prove in open court the source of such bond or premium before accepting the same and the burden of proof shall be upon the defendant or bondsman seeking the approval or acceptance of the bond.

SECTION 17. Sale of Forfeited Property.

Whenever a judgment of forfeiture is rendered under this act, the court may authorize the seizing agency or official to sell the property at public auction subject to the order and approval of the court. The court, in lieu of such sale, may order that the property be sold by any person having an interest in the real property whose interest has not been forfeited. The proceeds of such sale shall be subject to the orders of the court.

SECTION 18. Use of forfeited property for law enforcement.

All property forfeited shall be sold at public auction unless the court determines such property should be used for law enforcement purposes. Weapons shall be disposed of pursuant to the provisions of Tennessee Code Annotated, Section 39-17-1317. Upon certification by the chief executive official of the public agency responsible for the investigation and seizure of the property that the forfeited property shall be used for law enforcement purposes, the court may award such property to the public agency responsible for the investigation and seizure of the property. Such certification shall include an affidavit by the chief executive official that such property will be titled in the name of the government having jurisdiction over the public agency and be used for law enforcement purposes. If such property is thereafter sold, the chief executive shall submit an affidavit to the court and the attorney general certifying that the sale was conducted in accordance with the provisions of this act. The court may require that the proceeds from said sale be distributed in accordance with the provisions of this act.

SECTION 19. Disposition of forfeited property.

(a) The proceeds from all property forfeited and sold at public auction under this act shall be transmitted to the state treasurer who shall deposit it in the state general fund.

(b) Any public agency incurring out-of-pocket expenses from the investigation and seizure of property pursuant to the provisions of this act may file a claim with the

state board of claims for reimbursement of such expenses. The board of claims shall have the authority to reimburse such public agency only for out-of-pocket expenses incurred that are in addition to the normal operating costs of such agency.

SECTION 20. Assistance by other agencies.

The district attorney general or state attorney general may authorize any governmental department or agency of this state, any political subdivision thereof, or any other state or federal government to participate in the investigation into conduct relating to Sections 3 and 6 of this act.

SECTION 21. Immunities.

The attorney general, their assistants and investigators shall not be civilly liable for any act performed in furtherance of the purposes of this act.

SECTION 22. Supplement to other laws.

This act does not supersede any other statute or law relating to forfeiture of property and may be used in conjunction with other forfeiture laws. This act pertaining to the forfeiture of property is remedial and shall be liberally construed to effect its purpose.

SECTION 23. Saving provision.

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to the end the provisions are severable.

SECTION 24. Title.

Sections 1-23 of this act shall be known as the "Money Laundering and Forfeiture Act of 1995".

SECTION 25. Tennessee Code Annotated, Section 40-12-201, is amended by adding the following new item (1) to subsection (a) and by renumbering subsequent items accordingly:

(1) Section 3 of this act, relating to money laundering;

SECTION 26. This act shall take effect on July 1, 1995, the public welfare requiring it.